

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)	OAH No. 11-0175-CSS
C H. A)	CSSD No. 001126473
_____)	

CORRECTED DECISION AND ORDER¹

I. Introduction

On June 2, 2011, a formal hearing was held to consider the child support obligation of C H. A (Obligor) for the support of his child, J.² Mr. A participated in the hearing. The custodial parent, J N. M, also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on June 2, 2011.

This case is Mr. A's appeal of the Division's order modifying his child support obligation. Based on the testimony presented at the hearing, the administrative law judge concludes that Mr. A's modified ongoing child support should be set at \$607 per month effective April 1, **2011**, based on his 2010 income.

II. Facts

This case is a modification action increasing ongoing child support.³ Mr. A's existing child support for J was set in 2004 at \$232 per month.⁴ Ms. M filed a request for modification review in March of 2011.⁵ The Division issued a notice of the petition for modification on March 16, 2011.⁶

The Division issued a Modified Administrative Child Support and Medical Support Order on April 15, 2011.⁷ In the Modified Administrative Child Support and Medical Support

¹ In the Matter of C H. A, Child Support Decision and Order, was adopted and distributed to the parties. After the adoption, the Division filed a motion asking for a correction of a manifest typographical error that is, using the year 2010 instead of 2011 in references to the effective date of the modification and in the adoption. The motion was granted. This corrected decision is issued in place of the original. The corrections appear in bold italic type. This corrected decision is issued under the authority of 2 AAC 64.350(b).

² The hearing was held under Alaska Statute 25.27.190.

³ Alaska Civil Rule 90.3(h) governs child support modification actions.

⁴ Division's Pre Hearing Brief, page 1, & Exhibit 1.

⁵ Division's Pre Hearing Brief, page 1, & Exhibit 2.

⁶ Exhibit 3.

⁷ Exhibit 5.

Order. Mr. A's modified ongoing child support was increased to \$698 per month, effective April 1, 2011.⁸ This amount was based on estimated income using earnings information provided by Mr. A's recent paystubs.⁹

Mr. A requested a formal hearing. In that request, Mr. A complained that the Division had used too much income when his modified child support was calculated to be \$698 per month.¹⁰

At the hearing, Mr. A explained his employment history. Mr. A's earnings fluctuate based on the tourist season. Mr. A was concerned that he may not get as much in bonuses as he did in 2010, but admitted that his bonus could be more or less in 2011 than it was in 2010. Mr. A explained that he has three younger children in his home and his wife stays home to care for them.¹¹

After the hearing, the Division filed new calculations based on income information provided by Mr. A and confirmed by information reported to the Department of Labor. The Division made these calculations during the hearing. These calculations resulted in monthly ongoing child support of \$607 per month. This amount included a deduction for Mr. A's retirement contributions.¹² The Division's new calculations for Mr. A's modified ongoing child support are based on his 2010 income as reported on his 2010 W-2s.¹³

Mr. A argued that even \$607 would be too much for his monthly support obligation because if he paid that much for each of his four children he would not be able to afford it.¹⁴

At the hearing, Ms. M did not have any objections to this adjustment to Mr. A's modified ongoing child support.¹⁵

Based on the evidence in the record, I find that it is more likely than not the Division's new calculations at exhibit 7 and the income amounts used in those calculations are correct.¹⁶

⁸ Exhibit 5.

⁹ Exhibit 5, page 6.

¹⁰ Exhibit 6.

¹¹ Recording of Hearing – Testimony of Mr. A.

¹² Recording of Hearing.

¹³ The Division's new calculations are marked as Exhibit 7.

¹⁴ Recording of Hearing – Testimony of Mr. A.

¹⁵ Recording of Hearing – Testimony of Ms. M.

¹⁶ Recording of Hearing & Exhibit 7.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. A, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁷ Mr. A met his burden of proof to show that the ongoing monthly amount in Division's order was incorrect. Mr. A's 2010 earnings are a better estimate of his present income and earning capacity than the extrapolated 2011 earnings that the Division first used because Mr. A's earnings fluctuate seasonally.

As explained at the hearing, Alaska law does not give a deduction from income for the purposes of calculation child support for supporting younger children of a different relationship, but Mr. A would be allowed a deduction for his support for J from his support obligation for his younger children if he had to pay support for them because he was not living with them. His support amount for his younger three children would be based on only 33% of his adjusted gross income after this deduction, rather than 60%, that is, three times the 20% used to calculate his support for J. This is because all three of his younger have the same mother.¹⁸

Ongoing child support should be calculated based using the best estimate of Mr. A's income unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is needed to prevent an injustice.¹⁹ The new amounts calculated by the Division are correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at those amounts.

Alaska Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.²⁰ The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.²¹

The evidence in the record shows that a material change of circumstances has occurred since Mr. A's ongoing child support was set at \$232 per month. The modified ongoing amount calculated at \$607 per month is more than a 15 percent change from the outstanding order of

¹⁷ Alaska Regulation 15 AAC 05.030(h).

¹⁸ Alaska Civil Rule 90.3(a).

¹⁹ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

²⁰ Alaska Civil Rule 90.3(h)(1).

²¹ Alaska Civil Rule 90.3, Commentary X.

\$232 per month. A material change of circumstances justifying an upward modification of ongoing child support has occurred.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification should be effective April 1, **2011**, because the petition was issued in March of 2011.

IV. Conclusion

Mr. A's ongoing child support should be increased due to the increase in his earnings that has occurred since the ongoing monthly support amount was set in 2004.

V. Child Support Order

The Division's Modified Administrative Child Support and Medical Support Order issued on April 15, 2011, is amended as follows, all other provisions remain in effect:

1. Mr. A modified ongoing child support is set at \$607 per month, effective April 1, **2011**,
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for J.

DATED this 3rd day of August 2011.

By: Signed
Mark T. Handley
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of August, 2011

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]